



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 29 2014.

Neil Reiff, Esq.
Sandler, Reiff, Young & Lamb, P.C.
1025 Vermont Ave., NW, Suite 300
Washington, DC 20005

RE: MUR 6683
Fort Bend County Democratic Party, et al.

Dear Mr. Reiff:

On November 9, 2012, the Federal Election Commission notified your clients, Fort Bend County Democratic Party and S. Qaisar Imam "Q" in his official capacity as treasurer, (the "Committee") of a Complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On July 22, 2014, based on the information in the Complaint, and information provided by you on behalf of your clients, the Commission determined to dismiss the allegations that the Committee violated 2 U.S.C. §§ 433, 434 and 441d. Further, the Commission found that there is no reason to believe the Committee violated 2 U.S.C. § 441i(b) and 11 C.F.R. §§ 106.7, 300.32. Accordingly, the Commission closed its file in this matter.

The available information indicates that the Committee's expenditures for 2012 may have exceeded \$1,000, which would have required it to register with the Commission as a political committee and file the required disclosure reports. *See* 2 U.S.C. §§ 431(4)(C), 433(a), 434(a). Further, any person making a disbursement for a communication expressly advocating the election of a clearly identified federal candidate must fully comply with the disclaimer requirements at 2 U.S.C. § 441d and 11 C.F.R. § 110.11. It appears that the Committee failed to affix the appropriate disclaimer on its 2012 voters guide. The Commission cautions the Committee to take steps to ensure that its future conduct is in compliance with the Act and the Commission's Regulations.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Sincerely,

William A. Powers
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

5 RESPONDENT: Fort Bend County Democratic Party and MUR 6683
6 S. Qaisar Imam "Q" in his official capacity as treasurer
7

8 I. INTRODUCTION
9

10 This matter was generated by a Complaint filed with the Federal Election Commission.

11 See 2 U.S.C. § 437g(a)(1). The Commission has determined to dismiss as a matter of
12 prosecutorial discretion the allegation that Fort Bend County Democratic Party and S. Qaisar
13 Imam "Q" in is official capacity as treasurer ("Fort Bend" or "Respondent") violated 2 U.S.C.
14 §§ 433 and 434 by failing to register and report as a political committee because the available
15 information indicates that Fort Bend's expenditures for 2012 may have narrowly exceeded the
16 \$1,000 threshold; and the Commission cautions Fort Bend regarding the registration and
17 reporting requirements of the Federal Election Campaign Act of 1971, as amended (the "Act").
18 See 2 U.S.C. § 431(4)(C); *see also Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, the
19 Commission has found no reason to believe that Fort Bend violated 2 U.S.C. § 441i(b) or
20 11 C.F.R. §§ 106.7, 300.32 because it appears that Fort Bend used federally permissible funds to
21 pay for the mailer. Further, the Commission has determined to dismiss as a matter of
22 prosecutorial discretion the allegation that Fort Bend violated 2 U.S.C. § 441d because the partial
23 disclaimer clearly identified who paid for the mailer but cautions Fort Bend about the Act's
24 disclaimer requirements. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

II. FACTUAL AND LEGAL ANALYSIS

A. Statement of Facts

1. The Complaint and Response

The Complaint alleges that Fort Bend violated the Act by: (1) distributing a voters guide that caused it to become a political committee but failing to register and report with the Commission; (2) using impermissible funds to pay for "federal election activity" in the form of a voters guide; and (3) including an incomplete disclaimer on the guide. *See* Compl. (Oct. 22, 2012).

Fort Bend disputes that it triggered political committee status by distributing its voters guide because the share allocable to federal candidates in the guide did not exceed the \$1,000 statutory threshold and the advertisements in the guide were the only expenditures it made during 2012. *Resp.* at 1 (Dec. 20, 2012). Fort Bend also argues that it had "sufficient funds from federally permissible sources to pay for the entirety of the mailing." *Resp.* at 2. Finally, Fort Bend admits that the guide's disclaimer did not comply fully with the Act, but requests that the matter be dismissed or, in the alternative, referred to the Alternative Dispute Resolution Office. *Id.*

2. Fort Bend County Democratic Party

The Fort Bend County Democratic Party is registered with the Texas Ethics Commission as a "County Executive Committee of a Political Party"¹ and files regular state campaign finance

¹ The Texas Democratic Party's by-laws at III.E.6(b) define a County Executive Committee's principal purpose as including:

In addition to its statutory duties, the County Executive Committee shall have primary responsibility for planning and for coordinating the General Election campaigns of the Democratic Party's nominees within the county. In the case of nominees running for office in districts which include areas outside of the county, the County Executive Committee shall work with the Senatorial District

1 reports disclosing its receipts and disbursements.² Fort Bend describes its mission as to
2 “mobilize Fort Bend County citizens to advocate Democratic values and principles, and to elect
3 Democratic Candidates who serve the public good and act as good stewards of the public trust.”
4 *See About FBCDP, FORT BEND COUNTY DEMOCRATIC PARTY*,
5 http://www.fbcdp.org/houston/?page_id=2 (last visited Apr. 10, 2014). The Texas Democratic
6 Party, which is registered with the Commission as a state party committee of the Democratic
7 National Committee, identifies Fort Bend as one of its county parties, and explains on its website
8 that “[m]uch of the work of the Texas Democratic Party is conducted by our County Chairs and
9 County Parties. From running the primaries and organizing the precinct and county/senate
10 district conventions to turning out Democratic voters in the general election, strong County
11 Chairs and County Parties are crucial to our efforts.” *See Our Party, TEXAS DEMOCRATS*,
12 <http://www.txdemocrats.org/party/counties> (last visited Apr. 10, 2014), *see also* Texas
13 Democratic Party, Amended Statement of Organization (Apr. 15, 2013).

14 3. The 2012 Voters Guide

15 Available information shows that between September 4 and October 1, 2012, Fort Bend
16 distributed a 32-page guide to voters in Fort Bend County.³ The voters guide contains political
17 advertising featuring endorsements of federal, state, and local Democratic candidates; voter

Committee (as described in Article III.F. below). This responsibility shall include raising funds for conducting local campaigns, supporting the statewide effort for the entire ticket, producing materials and coordinating local services for all Democratic campaigns.

See The Rules of the Texas Democratic Party (2014-2015) at 9, available at <http://www.txdemocrats.org/pdf/TDP-Rules.pdf>.

² According to Texas Ethics Commission disclosure reports, in 2012 Fort Bend accepted political contributions aggregating \$53,326.69 and made expenditures aggregating \$53,137.34.

³ Although the Response describes the voters guide as 36 pages, the complete copy attached to the Response is in fact 32 pages in length. *See Resp. at 1, Attach.*

1 registration information; generic campaign activity; and commercial advertising by local
2 businesses. Compl. at 1; Resp. at 1, Attach. The guide's political advertising is primarily
3 focused on state and local candidates, *see* Resp., Attach. at 6-13, 15-18, 20-23, but three of the
4 guide's advertisements directly advocate for or against federal candidates, *see* Resp., Attach. at
5 2, 14, 32.

6 In the first such advertisement, the guide references U.S. Representative Al Green (9th
7 Congressional District, Texas). It identifies Green as a U.S. Congressman, contains a
8 photograph of the candidate next to the word "re-Elect Al Green," and states, "Al Green
9 respectfully asks for your vote in November." Resp., Attach. at 2. The second advertisement
10 contains a header asking, "How Do I Vote A Straight Democratic Ticket?" It provides
11 instructions for voting the "Straight Democratic Ticket," warns voters that Mitt Romney and
12 Paul Ryan want to "kill Medicare," and features the words "Vote Democrat!" Resp., Attach. at
13 14. It also displays the Obama-Biden 2012 campaign and "Seniors Obama" logos. *Id.*
14 Similarly, the last page of the guide contains the Obama-Biden 2012 campaign logo, as well as
15 the Fort Bend County Democratic Party's logo and those of other Democratic organizations,
16 encourages voters to "Join the Fort Bend Democratic Party," and concludes with the words "The
17 Left is Right – Vote Blue." Resp., Attach. at 32.

18 At the bottom of the cover page, the guide contains a one-sentence disclaimer, which is
19 not set off in a box and appears in italicized font. Resp., Attach. at 1. It states: "Pol. Adv. Paid
20 for by the Fort Bend County Democratic Party, Qaisar 'Q' Imam, Treasurer. – Judicial
21 candidates included in this newsletter do not endorse any other candidate." *Id.*

1 **B. LEGAL ANALYSIS**

2 1. Political Committee Status

3 The Complaint alleges that, “[i]n addition to the parts of the guide containing explicit
4 advocacy for clearly identified federal candidates, the partisan ‘federal election activity’
5 communications” of the guide also qualify as “expenditures” under the Act. Compl., at 1-2. As
6 a result of these alleged expenditures, the Complaint claims that Fort Bend exceeded the
7 spending threshold that requires entities to register and report with the Commission as political
8 committees.

9 A local committee of a political party is defined as an organization that by virtue of the
10 by-laws of a political party or the operation of state law is part of the official party structure, and
11 is responsible for the day-to-day operation of the political party at the level of city, county,
12 neighborhood, ward, district, precinct, or any other subdivision of a state. 11 C.F.R. § 100.14(b).
13 Pursuant to 2 U.S.C. § 431(4)(C), a local committee of a political party is a political committee if
14 it: (1) receives contributions aggregating in excess of \$5,000 during a calendar year; (2) makes
15 payments exempted from the definition of contribution or expenditure aggregating in excess of
16 \$5,000 during a calendar year; (3) makes contributions aggregating in excess of \$1,000 during a
17 calendar year; *or* (4) makes expenditures aggregating in excess of \$1,000 during a calendar
18 year.⁴ An “expenditure” is defined as “any purchase, payment, distribution, loan, advance,
19 deposit, or gift of money or anything of value made by any person for the purpose of influencing
20 any election for Federal office.” 2 U.S.C. § 431(9)(A)(i), 11 C.F.R. § 100.111.

⁴ Based on a review of Fort Bend’s state disclosures, during the calendar year 2012, it did not receive contributions in excess of \$5,000 for the purpose of influencing a federal election; nor did it make payments for exempt activities in excess of \$5,000 or direct contributions to federal candidates in excess of \$1,000. See 2 U.S.C. §§ 431(4)(C), 431(8)(A),(B), (9)(B).

Fort Bend appears to be a local committee of a political party because as a County Executive Committee under the Texas Democratic Party's by-laws it is responsible for the day-to-day operations at the county level. Rules of the Tex. Dem. Party, Art. III.E.6(b) (2014-2015), available at <http://www.txdemocrats.org/pdf/TDP-Rules.pdf>.

Fort Bend acknowledges that it mailed the guide, which cost \$19,790, but argues that doing so did not trigger political committee status or registration and reporting obligations. Resp. at 1, 2. Specifically, the Response asserts that "at most approximately 5%" of the cost of printing and mailing the guide (i.e., a prorated share of \$989.50) constituted expenditures by Fort Bend on behalf of federal candidates, an amount less than the \$1,000 statutory threshold. *Id.* at 1; see also 2 U.S.C. § 413(4)(C). Respondent does not identify which pages of the guide it includes in its calculation but asserts that some part of the federally allocable portion of the guide may have been paid for by the federal candidate featured in the advertisement.⁵

In determining whether an organization makes an expenditure by paying for communications, the Commission will analyze whether the communications contain express advocacy. See 11 C.F.R. § 100.22. The Commission's regulations state that the cost of expenditures between federal and non-federal candidates shall be attributed to each candidate "according to the benefit reasonably expected to be derived." 11 C.F.R. § 106.1(a). Thus, the costs associated with the portions of the voters guide that expressly advocate for or against

⁵ The Response provides that Congressman Al Green paid for the advertisement in which he is featured, but it does not state the amount Green paid for his advertisement, or how Green purportedly paid for the ad (either personally or through his campaign). *Id.* Al Green for Congress' reports filed with the Commission disclose that it made a \$10,000 disbursement to Fort Bend County Democratic Party on August 17, 2012, for GOTV efforts in Fort Bend County, but they do not further specify the type of GOTV this disbursement supported. See Al Green for Congress, Amended 2012 October Quarterly Report at 29 (Feb. 7, 2013); available at <http://docquery.fec.gov/pdf/183/13940104183/13940104183.pdf>. It is therefore unclear how much of this \$10,000 payment offset Fort Bend's costs for printing and mailing the voters guide.

1 federal candidates are allocated to determine whether Fort Bend has exceeded the \$1,000
2 statutory threshold for registering and reporting as a political committee. *See id.* § 106.1.

3 The available information indicates that Fort Bend's expenditures for 2012 may have
4 exceeded the \$1,000 threshold. Three pages of the voter guide expressly advocate the election of
5 a federal candidate under 11 C.F.R. § 100.22(a):⁶ (1) the "Re-Elect Al Green" advertisement
6 (Rcsp., Attach. at 2); (2) the page instructing "How Do I Vote a Straight Democratic Ticket?"
7 accompanied by the Obama campaign's logo (*id.* at 14); and (3) the final page of the guide,
8 which concludes with the words "The Left is Right – Vote Blue" next to the Obama-Biden 2012
9 campaign logo (*id.* at 32). If the entire federally allocable share of the guide was attributed to
10 Fort Bend, the resulting expenditure exceeded the statutory political committee threshold, but by
11 no more than \$800.⁷

12 Therefore, the Commission dismisses the allegation that Fort Bend violated 2 U.S.C.
13 §§ 433(a) and 434(a) by failing to register with the Commission as a political committee and file
14 the required disclosure reports, but cautions Fort Bend regarding the registration and reporting

⁶ Under 11 C.F.R. § 100.22(a), a communication contains express advocacy when it uses phrases such as:

"vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s), or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Regan/Bush," or "Mondale!"

See also Buckley v. Valeo, 424 U.S. 1, 44 (1976).

⁷ If, for example, the three pages of the guide that contain express advocacy of clearly identified federal candidates are allocated entirely to the federal share, then the resulting expenditure would be \$1,781 (3/32 or 9% of the guide, which amounts to \$1,781 (.09 x \$19,790)). Moreover, even if the Green advertisement is omitted from the allocation calculation, *see supra*, n. 5, the express advocacy amount may still have exceeded the \$1,000 threshold.

1 requirements of the Act. *See Heckler v. Chaney*, 470 U.S. 821 (1985); *see also* MUR 6205 (Fort
2 Bend Democrats) (dismissal where the federal portion of the expenses for the door hangers may
3 have exceeded the \$1,000 threshold for expenditures by \$1,800);⁸ *see also* MUR 6153 (New
4 Mexico Democratic Legislative Campaign Committee, *et al.*) (dismissal where the party
5 committee exceeded the statutory threshold for political committee status by about \$500).

6 2. Payment for Federal Election Activity

7 The Complaint alleges that Fort Bend funded its expenditures for the voters guide from a
8 state account in contravention of the Act's requirement that federal election activity be funded
9 exclusively with federally permissible funds. Compl. at 2; *see* 2 U.S.C. § 441i(b); 11 C.F.R.
10 § 300.32. In addition, the Complaint alleges that all of Fort Bend's overhead and administrative
11 expenses should have been funded with 36% federal funds.⁹ Compl. at 3.

12 Federal election activity is defined as (1) voter registration activity during the period 120
13 days before a regularly scheduled federal election; (2) voter identification, get-out-the-vote, and
14 generic campaign activity conducted in connection with an election in which a candidate for
15 federal office appears on the ballot; (3) a public communication that refers to a clearly identified
16 candidate for federal office that promotes, attacks, supports or opposes ("PASOs") a candidate

⁸ Fort Bend Democrats is not the same entity as the Respondent in this matter, the Fort Bend County Democratic Party.

⁹ With regard to the payment of administrative costs and exempt activities (that are not federal election activities) in connection with federal and non-federal elections, Commission regulations set forth that state, district, and local party committees must only use funds that are subject to the prohibitions and limitations of the Act, or they may allocate such expenses between their federal and non-federal accounts. 11 C.F.R. § 106.7(b). State, district, and local party committees that have established federal and non-federal accounts must allocate no less than 36% of these expenses to their federal accounts during Presidential and Senate election years (and the preceding year). *See* 11 C.F.R. § 106.7(d)(2)(ii), (3)(ii). Fort Bend chose not to establish separate accounts nor to allocate between federal and non-federal accounts and rather rely on its funds being federally compliant. *See* Resp. at 2; Supp. Resp. at 1. A review of Fort Bend's state disclosures shows that during the 2012 year, it had sufficient federally compliant funds to fund administrative expenses and exempt activities. During the preceding year, 2011, Fort Bend used \$1,500 in non-federally compliant funds to pay for office overhead and rental expenses. *See* n.10, *infra*. Even if this amount were to be subtracted, it appears that Fort Bend also had sufficient federally compliant funds to pay for its remaining administrative costs and exempt activities in 2011.

1 for that office; and (4) services provided during any given calendar month by an employee of a
2 state, district, or local party committee who spends more than 25 percent of his or her
3 compensated time during that month on activities in connection with a federal election. 2 U.S.C.
4 § 431(20)(A); 11 C.F.R. § 100.24(a).

5 Federal election activity does not include any amount expended or disbursed by a state or
6 local party committee for, among other things, a public communication that refers solely to
7 clearly identified candidates for nonfederal office and does not PASO a clearly identified federal
8 candidate unless it otherwise qualifies as voter registration, generic campaign activity, get-out-
9 the-vote, or voter identification. 2 U.S.C. § 431(20)(B); 11 C.F.R. § 100.24(c).

10 Regardless of whether a local party committee is a "political committee," it must finance
11 federal election activity with funds subject to the limitations and source prohibitions of the Act
12 through a specified account and meet recordkeeping and reporting requirements. 2 U.S.C.
13 § 441i(b)(1); 11 C.F.R. §§ 102.5, 300.32(a)(2), 300.36. The committee must also demonstrate
14 through a reasonable accounting method that whenever such an organization makes a
15 contribution or expenditure or payment for exempt activity the organization has received
16 sufficient federally permissible funds. *See* 11 C.F.R. § 300.36(a)(1) (requiring reasonable
17 accounting method for federal election activity for local party committees or organizations); *see*
18 *also id.* § 102.5(b) (same, but for organizations financing political activity in connection with
19 federal and non-federal elections). In addition, a local party committee that is a political
20 committee and that has \$5,000 or more of aggregate receipts and disbursements for federal
21 election activity during a calendar year must file reports disclosing its receipts and disbursements
22 made for federal election activity. *Id.* § 300.36(b)(2).

1 Here, Fort Bend's 2012 voters guide contains three of the four defined types of federal
2 election activity. *See* 2 U.S.C. §§ 431(20)(A), 441i(b). The guide contains voter registration
3 activity because it informs citizens how to register to vote within the 120-day period before the
4 November 6 federal election. *Resp.*, Attach. at 4 - 5, 25; *see also* 2 U.S.C. § 431(20)(A)(i);
5 11 C.F.R. §§ 100.24(a)(2)(i)(A)-(G), 100.24(b)(1). The guide also contains federal election
6 activity in the form of GOTV messages informing citizens on voting schedules, and generic
7 campaign activity promoting the Democratic Party and its local clubs, conducted in connection
8 with an election in which federal candidates appear on the ballot. *Resp.*, Attach. at 18 - 20, 28 -
9 30. *See* 2 U.S.C. §§ 431(20)(A)(ii), 431(21); 11 C.F.R. §§ 100.24(a)(3)(i)(A)-(D),
10 100.24(b)(2), 100.25. Finally, as discussed above, *see supra* pp. 7-9, the political advertisements
11 clearly identifying Green, Obama, and Biden expressly advocate for their elections, and thus
12 constitute federal election activity in the form of a public communication that refers to clearly
13 identified federal candidates and promotes and supports those candidates. *See*
14 2 U.S.C. § 431(20)(A)(iii); 11 C.F.R. §§ 100.24(b)(3), 100.26, 100.27.

15 The Response asserts that Fort Bend used federally permissible funds to pay for the
16 \$19,790 in printing and mailing costs associated with the voters guide. *Resp.* at 1-2. Fort Bend
17 also clarified that (1) all of the funds it received during 2012 were federally compliant;
18 (2) Texas law is similar to federal campaign finance laws in that it prohibits contributions from
19 the treasuries of unions and corporations; and (3) Fort Bend's largest individual donors usually
20 do not exceed around \$1,000. *Supp. Resp.* at 1.

21 Based on a review of Fort Bend's state disclosures, it appears that Fort Bend financed its
22 activities in connection with a federal election with federally permissible funds. 2 U.S.C.
23 § 441i(b); 11 C.F.R. § 102.5(b). Fort Bend stated in its Supplemental Response that Texas law

1 maintains equivalent prohibitions and limitations to those in the Act and, therefore, that all of its
2 funds are appropriate federal funds. Supp. Resp. at 1. Fort Bend was also able to demonstrate
3 that it had sufficient federally permissible funds to pay for federal election activity by
4 referencing its state reports. See discussion at nn. 2, 9-10. Although there is no information as to
5 what accounting method Fort Bend used, Fort Bend's assertion that its voters guide was paid for
6 with federally permissible funds appears to rely on its claim that all its funds were federally
7 compliant. Resp. at 1-2; Supp. Resp. at 1. By avoiding receipt of federally impermissible funds
8 in 2012, Fort Bend adequately ensured that the funds it used to pay for federal election activity in
9 2012 were federally compliant.¹⁰

10 Therefore, there is no reason to believe that Fort Bend violated 2 U.S.C. § 441i(b) and
11 11 C.F.R. §§ 106.7, 300.32, because its disbursements for federal election activity appear to have
12 been made from funds subject to the limitations and prohibitions of the Act.¹¹

¹⁰ Respondent is correct that Texas law generally prohibits corporations and labor organizations from making political contributions. See TEX. ETH. CODE ANN. § 253.094 (West 2009), available at <http://www.ethics.state.tx.us/statutes/11title15.html#253.094>. An exception to this general rule allows corporations and labor organizations to make a political expenditure to finance the establishment, administration, maintenance or operation of a general-purpose committee. See *id.* § 253.100(a), (c). Indeed, Fort Bend disclosed to the Texas Ethics Commission the receipt of a \$1,500 corporate contribution from GP Industrial, Inc. on February 18, 2011, reportedly used for the purpose of "Office Overhead/Rental Expense." See Fort Bend, Political Party Report Regarding Funds from Corporations and Labor Organizations at 3 (July 15, 2011), available at <http://204.65.203.5/public/498279.pdf>. Fort Bend also disclosed receipt of a \$2,000 contribution from "Fort Bend Employee Federation" on August 20, 2012, which appears to be the Texas affiliate of the American Federation of Teachers union. See Fort Bend, County Executive Committee Campaign Finance Report at 9 (Oct. 26, 2012), available at <http://204.65.203.5/public/547720.pdf>. It is not clear from the state disclosure reports whether this entity is a labor organization or political action committee. If it is a contribution from a labor organization, then it would be prohibited pursuant to 2 U.S.C. § 441b. Nevertheless, during the 2012 calendar year – the applicable period for determining Fort Bend's obligation as a federal political committee – given that Fort Bend received an aggregate amount of \$53,326.69 in contributions during 2012, if the \$2,000 Fort Bend Employee Federation contribution were to be subtracted, then there would be remaining sufficient funds from other federally permissible sources to cover the costs of the voters guide, *i.e.*, \$19,790.

¹¹ As a political committee, Fort Bend would also be required to report this disbursement to the Commission because it exceeded \$5,000 in receipts and disbursements for federal election activity. See 11 C.F.R. § 300.36(b)(2). However, given that the allegations as to political committee status are being dismissed, a Section 300.36(b)(2) violation similarly need not be addressed.

1 3. Disclaimer Requirements

2 Finally, the Complaint alleges that Fort Bend's voter guide did not display the
3 appropriate disclaimer pursuant to 11 C.F.R. § 110.11(c)(ii)(requiring disclaimers to be
4 contained in a printed box set apart from the other contents of the communication). Compl. at 3.

5 Any person making a disbursement for communications expressly advocating for a
6 clearly identified federal candidate must comply with the disclaimer requirements at 2 U.S.C.
7 § 441d and 11 C.F.R. § 110.11(a)-(c). As discussed above, the voters guide expressly advocates
8 for the elections of Obama, Biden, and Green to federal office and for the defeat of Romney and
9 Ryan. The front page of the guide contains some elements of a conforming disclaimer — *i.e.*, it
10 contains the name of the entity paying for the communication, and it appears to be of sufficient
11 type size and reasonable color contrast between the background and printed statement to be
12 clearly readable — but it does not include the address, telephone number, or internet address of
13 the person who paid for the communication, and it does not state whether the communication is
14 authorized by any federal candidate or candidate's committee, nor is the disclaimer contained in
15 a printed box separate from the other contents of the communication. *See* 2 U.S.C. § 441d;
16 11 C.F.R. § 110.11 (a)-(c). Thus, Fort Bend did not fully comply with the Act's disclaimer
17 requirements. The Response admits that the disclaimer was not displayed in a printed box nor
18 did it state whether the mailer was authorized by a federal candidate. Resp. at 2. Fort Bend
19 explains that it was not fully aware of the Commission's disclaimer requirements, its counsel has
20 since now admonished them, and it will comply with the requirements in the future. *Id.*

21 In similar situations where there was a failure to include the requisite disclaimer, but
22 there was some information identifying the committee payor, the Commission has dismissed the
23 alleged disclaimer violation and issued a letter of caution. *See, e.g.*, MUR 6633 (Republican

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Therefore, the Commission has determined to dismiss as a matter of prosecutorial discretion the allegation that Fort Bend violated 2 U.S.C. § 441d because the partial disclaimer clearly identified who paid for the mailer but cautions Fort Bend about the Act's disclaimer requirements. See *Heckler v. Chaney*, 470 U.S. 821 (1985).